

Federal Emergency Management Agency

Washington, D.C. 20472

MEMORANDUM FOR: Federal Coordinating Officers
Regional Directors
Acting Regional Directors

ATTENTION: Regional Response and Recovery Division Directors
Regional Mitigation Division Directors

FROM: Daniel A. Craig
Director
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DATE: 13-APR-05

SUBJECT: Disaster Declaration Procedures After May 1, 2005 for
States Without an Approved State Mitigation Plan

Purpose

The purpose of this memorandum is to provide guidance to FEMA regional offices and Federal Coordinating Officers regarding procedures for processing requests for major disaster declarations after May 1, 2005 from States and Territories that **do not have** a FEMA approved State Mitigation Plan (SMP). Guidance regarding Tribal declarations is being developed and will be issued by the end of this month.

Introduction

After May 1, 2005, States, Territories and Indian tribal governments applying for FEMA assistance as a grantee must have a FEMA approved mitigation plan meeting the requirements of 44 CFR 201.4 for State Mitigation Plans, in order for the State (and communities within it) to receive non-emergency Stafford Act assistance. For major disasters declared after May 1, the types of assistance subject to this requirement are Public Assistance Categories C-G and the Hazard Mitigation Grant Program (HMGP). Please note that Fire Management Assistance declarations and the Pre-Disaster Mitigation Grant Program (PDM) are also subject to this requirement, and separate guidance will be available for those programs. The guidance in this memorandum is specific to requests for major disaster declarations.

Headquarters and Regional mitigation staff have been working closely with the States on the development of their plans over the last three years. As of April 8, 2005, 43 States have approved SMPs, and we expect that most, if not all, of the remaining States' plans will be approved by May 1. The procedures outlined in this memorandum will be implemented only in those cases where, after May 1, 2005, a State does not have an approved plan at the time of a major disaster declaration. Further, because FEMA regulations (44 CFR 201.4) require SMPs to be updated every three years and resubmitted to FEMA for review and approval, these procedures will be implemented in the future if a State does not have its updated plan approved by three years from the date of initial approval.

Procedures for Major Disaster Declarations After May 1, 2005 for States Without an Approved SMP

The regional analysis and recommendations regarding requests for major disasters will include a summary of the status of the SMP. We have revised the existing declaration templates to provide appropriate language for this purpose.

The recommendation for a major disaster declaration will be based on a per capita calculation using all eligible public assistance (PA) costs, Categories A-G. The letters to the Under Secretary and the Governor, and the Federal Register Notice (FRN), will authorize only PA Categories A and B, and Individual Assistance (IA), as appropriate, and indicate that FEMA may add PA Categories C-G and HMGP upon FEMA approval of the State Mitigation Plan (SMP) that has been adopted by the State. The State will have 30 calendar days from the date of declaration to formally submit an approvable SMP for FEMA review and approval. Separate guidance will be provided to define exactly what States must do to meet the requirement of formally submitting an approvable SMP for review.

Because the States that are still working on their plans are relatively well along in the process, it is reasonable to expect that States will be able to meet the FEMA requirements for plan approval within this timeframe. If the State does submit the SMP for FEMA review and approval, FEMA has 45 calendar days, whenever possible, to review the plan and provide feedback to the State. Thus, with strong efforts by the State and FEMA regional office, the State could have an approved SMP by approximately 75 calendar days, if not sooner, from the original declaration.

If the State does not formally submit its approvable SMP for FEMA review and approval within 30 days, FEMA will notify the State that it has denied the State's request for assistance under PA Categories C-G and HMGP, based on its failure to meet the requirement within the deadline. Upon receipt of this notification, the State may appeal the denial, in accordance with 44 CFR 206.46. In this situation, the only issues on which the State could base an appeal would be that they had in fact submitted their SMP to FEMA for review, or had a FEMA approved SMP, prior to the 30-day deadline.

FEMA work on the Public Assistance Project Worksheets (PW) for both emergency and permanent work will begin when the State formally submits its SMP to FEMA for review and approval, i.e., by 30 calendar days from the declaration, unless the regional office determines that the plan requires work so significant as to preclude approval within the 45-day review timeframe.

Please contact either one of us if you have any questions, or Magda Ruiz for declarations issues (202-646-3629); Chuck Stuart for Public Assistance and PDA issues (202-646-3691); or Terry Baker for State Mitigation Plan issues (202-646-4648).